IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6514 of 2007
with
SPECIAL CIVIL APPLICATION No. 6515 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOSWAMI KALYANRAIJI GOVINDRAIJI & 2 - Petitioner(s)
Versus
GOSWAMI VALLABHRAIJI GOVINDRAIJI - Respondent(s)

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Appearance :
MR SUNIT SHAH WITH MR.ASPI M KAPADIA for Petitioner(s) : 1 - 3.
MR KARTIKEY P RAWAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 28/03/2007

COMMON ORAL JUDGMENT :

Rule. Mr.Kartikey P. Rawal, learned advocate

waives service of rule. At the request of the learned advocates for the parties, the matters are taken up for hearing and final disposal.

2. Shri Goswami Kalyanraiji Govindraiji and others are the petitioners in both these petitions.

Special Civil Application No.6514 of 2007 is filed challenging order dated 13.02.2007 passed below Exhibits 126 in Regular Civil Suit No.9 of 2001; and Special Civil Application No.6515 of 2007 is filed challenging order dated 13.02.2007 passed below Exh.194 in Regular Civil Suit No.9 of 2001; by the learned 9th Additional Senior Civil Judge, Surat. Exh.126 was filed on 28.09.2001 seeking amendment under Order VI, Rule 17 of the Code of Civil Procedure. By filing application, Exh.126 what was sought for was that, 'instead of 1/3rd share in Shashti Pithadhishwar (6th Pithadhishwar) the same be raised from 1/3rd to ½ share' and second major amendment sought for was that, 'Shashti Pithadhishwarship which was originally claimed along with the defendants in joint was claimed in joint with defendant no.2 only.'

3. By application, Exh.194 it was claimed that besides the claim of the plaintiff under the will (dated 25.11.1996) and Codicil (dated 11.08.1995), the plaintiff is entitled to benefits under the Hindu Law being the grand son of Sashthadish (6th Pithadhishwar) Vraj Ratanlalji Maharajshri. It is claimed that the plaintiff is having a right to Seva and also ownership in the properties.

The other amendment sought for by exh.194 was making reference to the contents of Exh.55-a reply filed by the present petitioner to the application, exh.5.

4. The learned advocate for the petitioner vehemently submitted that exh.55 was not the written statement filed by the present petitioner and therefore, reference to any of the contents of exh.55 was uncalled for.

5. Learned advocate Mr.Kapadia for the petitioner submitted that application, exh.126 was filed on 28th September 2001 and Exh.194 was filed on 25th August

2003. He submitted that this shows that the plaintiff was not clear about his own claims, which he was putting forward by application after application. He submitted that the court below has erred in allowing amendment without appreciating that such amendment could not have been allowed as it was not warranted in view of the settled law pronounced by the Hon'ble the Apex Court.

6. Learned advocate relied upon the following decisions of the Hon'ble the Apex Court:

(i)In the matter of **Gurdial Singh and others Vs. Raj Kumar Aneja and others**, reported in A.I.R. 2002 SC 1003;

(ii)In the matter of **Arundhati Mishra (Smt) Vs. Sri Ram Charitra Pandey**, reported in (1994) 2 SCC 29;

(iii)In the matter of **Shrimoni Gurudwara Committee Vs. Jaswant Singh**, reported in (1996) 11 SCC 690;

(iv)In the matter of **T. Arivandandam Vs. T.V.**

Satyapal, reported in A.I.R. 1977 SC 2421;

(v)(1998) 2 SCC 240;

(vi)In the matter of **Surya Dev Rai Vs. Ram Chander Rai and others**, reported in (2003) 6 SCC 675;

Besides, he also relied upon a decision of the High Court of Orissa in the matter of **Smt.Sabitri Debi Vs. Ramachandra Mishra and others**, reported in A.I.R. 1985 Orissa 245, and also a decision of the Privy Council in the matter of **Ma Shwe Mya Vs. Maung Mo Hnaung**, reported in 1922 Privy Council 249.

7. The gist of the submissions of the learned advocate is that, 'amendment could not have been allowed for the simple reason that by this amendment the plaintiff was changing the nature of the suit or in any case its claim in the suit.'

The learned advocate for the petitioner submitted that the application, exh.126 was filed in the year 2001, but then no specific reason was set out for filing the same at that stage. He submitted that in

the application there is no reason set out as to why that amendment application was required to be filed by the plaintiff at that stage. He submitted that it is not the case of the plaintiff that what he is claimed by this proposed amendment is something which came to his knowledge only after filing of the suit and therefore, the plaint of the suit is required to be amended.

8. The learned advocate submitted that similar or even weaker than that of exh.126 is the case so far as exh.194 is concerned. He submitted that exh.194 was prepared on 25.08.2003, but filed on 17.09.2003. Even in this application not a word is stated as to why after so long the amendment is sought for. He submitted that he is not pressing the delay aspect, but then the Court ought to have looked into the justification for filing the amendment application at such a belated stage. He submitted that in absence of any justification, amendment ought to have been held as not warranted and application ought to have been rejected.

The judgements which are referred to by the learned advocate for the petitioner have no application to the facts of the present case. Hence detailed discussion of each of the judgement of the Hon'ble the Apex Court, the Privy Council and the High Court of Orissa is not undertaken.

9. In reply, the learned advocate, Mr.Sunit Shah submitted that rule is to allow the amendment and rejection is the exception. He submitted that unless Court is convinced on the aspect that allowing of an amendment application is going to cause prejudice to the party, there is no question of rejecting the same. He submitted that the real test to be applied by the Court to an application for amendment is, 'whether the case pleaded by amendment could be pleaded by filing a new suit and if yes, it will be hit by the principle of res judicata'. He submitted that besides the aforesaid test what is most important in the present case is that both these applications, Exh.126 and 194 are filed before framing of issues. Therefore, not even remotely any prejudice is caused to the petitioner before this

Court. Learned advocate Mr.Shah relied upon a decision of the Hon'ble the Apex Court in the matter of **Rajesh Kumar Aggarwal & ors Vs. K.K. Modi & others**, reported in A.I.R. 2006 SC 1647. He invited attention of the Court to Head Note (B) of the said judgement, wherein the Hon'ble the Apex Court has observed that:

> "While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness of falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment."

Learned advocate Mr.Shah submitted that unless the petitioner is able to point out prejudice caused by the amendment allowed by the court below, no interference is called for at the hands of this Court.

Having heard the learned advocates and having gone through Exhibits 126 and 194 filed seeking amendment, before framing of the issues this Court is of the opinion that no prejudice is caused to the petitioner. That being so, the Court below has not committed any error which will warrant an interference at the hands of this Court. In the result these petitions fail. The same are rejected. Rule is discharged with no order as to cost.

10. At this stage, learned advocate Mr.Kapadia for the petitioner requests that this order be stayed for two weeks to enable the petitioner to have recourse to the remedy available to him.

Having found no substance in the petition, the request made by the learned advocate is rejected.

(RAVI R. TRIPATHI, J.)

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